

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.12.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN  
and

The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.888 of 2007

Kala

... Petitioner

vs.

1. The Secretary to Government (Home),  
Prohibition and Excise Department,  
Secretariat, Chennai.9.

2. The Commissioner of Police,  
Greater Chennai, Egmore, Chennai.8.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in BDEGISSV No.207 of 2007, dated 18.5.2007, to set aside the same and direct the respondents to produce the body of the petitioner's husband/detenu Sekar @ City Sekar, son of Doss, now detained at Central Prison, Puzhal.

For Petitioner : Mr.V.Ganesh

For Respondents : Mr.N.R.Elango,  
Additional Public Prosecutor.

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner herein challenges the impugned order of detention, dated 18.05.2007, whereby, her husband by name Sekar @ City Sekar has been detained as 'Drug Offender' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. It is seen from the grounds on which the detention order came to be passed that on 18.04.2007 at 07.00 Hours, the Sub Inspector of

Police attached to D-1 Triplicane Police Station, on receipt of information through informants to the effect that the detenu was selling Ganja at Victoria Hostel Road by sitting in front of Kasturibai Gandhi Government Hospital for Women and Children at Triplicane, proceeded to the spot and reached there at 08.00 Hrs. along with police team. He found the detenu keeping a palatine bag and surrounded by four persons. On seeing the police, those who were purchasing Ganja from the detenu ran away and, on questioning the detenu and informing him about his right to be searched before a Gazetted Officer, he conveyed his willingness, whereupon, the bag possessed by him was searched and it was found to contain 4.250 Kgs. of Ganja. The Sub Inspector arrested the detenu, seized the contraband, came to the police station and registered a case in Cr. No.851 of 2007 for offences punishable under Section 8(c) read with 20 (b), (ii) (B) of NDPS Act. The chemical analysis report in respect of the sample of the contraband revealed that it was found to contain cannabinoids, an injurious and dangerous substance to human nature and health. The Detaining Authority, taking note of four adverse cases to the credit of the detenu, clamped the order of detention branding him as 'Drug Offender'.

3. According to the learned counsel for the petitioner, in the grounds of detention, the Detaining Authority, while mentioning the opinion of the Doctor with regard to the contraband seized, has added certain information which is not available at all in the Opinion and inasmuch as the Detaining Authority has mentioned such details without any basis, the ultimate order of detention is liable to be quashed.

4. With regard to the contention of the learned counsel, we verified the materials available on record. In the last portion of paragraph No.3 of the grounds of detention, the Detaining Authority has stated as follows:-

" The Doctor opined that Cannabinoids is injurious and dangerous to human nature and health because it impairs the cognitive function, perception, reaction time, impairment of co-ordination and tricking behaviour and also stated that Ganja is an intoxicating drug and consumption of the same will cause danger to life and health. "

As rightly pointed out, the version to the effect 'also stated that Ganja is an intoxicating drug and consumption of the same will cause danger to life and health' is not found in the Opinion. It is very much relevant in this regard to extract here-under the opinion on Cannabinoids available at page No.225 of the Book-let:-

" Cannabis produces euphoria, drowsiness, alteration in time sense, uncontrollable laughter and depersonalization. Thinking and concentration becomes difficult. Cognitive functions are suppressed. Mental and

motor coordination are reduced. Sleep pattern altered. Acute effects are tachycardia, hypotension and conjunctival vascular congestion. High doses cannabis induce and acute or sub acute Paranoid Hallucinatory Pscychosis. "

Thus, a comparative reading of the Opinion of the Doctor and mentioning of the same by the Detaining Authority in the grounds of detention would only show that the Detaining Authority, without any basis, has added certain aspects which were not at all mentioned in the Opinion; as a result, the detenu was deprived from making an effective representation. In view of the same, we are of the view that the detention order is liable to be set aside.

5. Accordingly, the Habeas Corpus Petition is allowed and the order of detention is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary to Government (Home),  
Prohibition and Excise Department,  
Secretariat, Chennai.9.

2. The Commissioner of Police,  
Greater Chennai, Egmore, Chennai.8.

3. The Public Prosecutor, High Court, Madras.

4. The Superintendent, Central Prison, Puzhal, Chennai.

5.The Joint Secretary to Govt.  
Public (Law and Order) Department,  
Fort St.George, Secretariat,Chennai-9.

ASM (CO)  
km/12.12.

HCP No.888 of 2007.